

SOUTH AFRICA / JUDGMENT

Bruin and Another v S (CA&R7/17) [2017] ZANCHC 43 (19 May 2017)

[2017] ZANCHC 43

COURT

Northern Cape High Court, Kimberley

BEFORE

Williams, Snyders

CASE / FILE NUMBER

CA&R 7/17

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IN

THE HIGH COURT OF SOUTH AFRICA

(NORTHERN

CAPE HIGHT COURT KIMBERLEY)

Case

number: CA&R 7/17

Date

heard: 08/05/2017

Date

delivered: 19/05/2017

In

the matter of:

BAZIL

DE BRUIN

1st

Appellant

NATHAN

ARENDS

2nd

Appellant

and

THE

STATE

Respondent

Coram:

Williams J et Snyders AJ

JUDGMENT

SNYDERS, AJ

1. The appellants were convicted on 12 August 2016 in the Kimberley Regional Court on 02 charges, viz housebreaking with the intent to steal (read with the provisions of s 262(1) and 264 of the Criminal Procedure Act, 51 of 1977 (“the CPA”)) and robbery with aggravating circumstances.
2. On said date, the appellants were both sentenced to 15 years imprisonment. Both counts were taken together for the purpose of sentencing. The court a quo granted leave to appeal to this court on both conviction and sentence on 26 October 2016.
3. The appellants have taken no issue with the conviction of housebreaking with the intent to steal. Adv Buthelezi who appeared for the appellants contended that the only issue regarding the conviction was whether the appellants were properly convicted of robbery.
4. I must therefore determine whether the facts justified the conviction of robbery with aggravating circumstances, and if it did not, whether it should be set aside. I must also determine whether there were substantial and compelling circumstances present to deviate from the prescribed minimum sentence of 15 years.
5. On 22 October 2015, grocery items belonging to the complainant were stolen out of his tuckshop. On said date, the complainant left the tuckshop to buy airtime at a tuckshop next door. He left the light on in the tuckshop and only closed one of the doors as he did not intend to be gone long.
6. Upon his return some 15 minutes later, the complainant heard voices in his tuckshop. The complainant attempted to close the burglar door to trap the two appellants inside the tuckshop. The 2nd appellant stabbed the complainant to prevent the complainant from closing the burglar gate. The 2nd appellant then ran away with the bag containing the stolen groceries while the 1st appellant exited the tuckshop and stabbed the complainant multiple times.
7. Although the appellants denied the theft and assault during the trial, it was conceded in the appeal that the appellants broke into the complainant’s shop, stole his property and assaulted him.
8. The appellants however, state that the Magistrate erred in finding that violence need not precede the theft in order to constitute robbery. Thus the assault on the complainant after the items had been stolen could not result in a conviction of robbery.

9. Robbery can be defined as the theft of property by unlawfully and intentionally using violence to take the property from somebody else, or threats of violence to induce the possessor of the property to submit to the taking of the property.[1] In the discussion of said definition, the author CR Snyman, writes that the violence must precede the theft.[2]
10. However, the Appeal Court held in *S v Yolelo*[3] that robbery can also be committed if violence followed the theft. The court further went on to find that in each case, an investigation

will have to be made into whether, in light of all the circumstances, especially the time and place of the appellant's acts, there is such a close link between the theft and the commission of violence that they can be regarded as connecting components of substantially one action.

11. Therein, the Appeal Court raised the issue that it must be determined whether the intention of the offender in the commission of the violence must be directed towards the retention of possession of the goods, as opposed to mere flight. This point was however not decided upon.
12. In the appellate division matter of *R v Magao*[4], the court held that even though the goods were not taken in the presence of the person assaulted, the taking of the goods under the circumstances still amounted to robbery. In that matter, the gardener was assaulted and tied up in the servant's room. The servant's room was a little distance from the house where the theft took place. However, the court held that the assault on the gardener was necessary to obtain the stolen property or to prevent resistance to its being stolen.[5]
13. In this matter, the complainant left the light on in his shop and only closed one door. He went next door for airtime. When he returned, he found the appellants in the shop armed with knives. This shows the appellants accepted that the complainant might return and showed that they were prepared for his return and prepared to use violence.
14. At the time that the complainant returned, the items were in the 2nd appellant's bag, but were still on the premises. The appellants thus had limited control or possession of the items. There were cigarettes lying around the shop, which clearly showed that the theft was still in progress when it was interrupted by the complainant. After stabbing the complainant, the appellants left the premises with the bag. Thus the violence was applied to retain possession or control over the items, as well as to prevent resistance to its being stolen. I am satisfied that there is such a close link between the theft and the commission of the violence, to connect the two components as substantially one action herein.
15. It is trite that the prescribed minimum sentences should not be departed from lightly and for flimsy reasons[6]. The prescribed sentence herein is 15 years imprisonment. Thus, this sentence shall be imposed unless the trial court is satisfied that substantial and compelling circumstances exist to deviate from the sentence as prescribed.

16. The learned magistrate in the court a quo properly took into account all factors to be considered before sentencing. On reviewing all of the factors, especially the appellants personal circumstances, I can find no substantial and compelling circumstances to justify a deviation from the prescribed sentence.
17. Instead, the circumstances are aggravated by the injuries sustained by the complainant, in that he will never have full and proper use of one of his hands. Both the appellants had relevant previous convictions. The 1st appellant had two previous convictions of theft and had two previous convictions of housebreaking with the intent to steal and theft. The 2nd appellant had one conviction of assault with the intent to do grievous bodily harm and one conviction of assault. The learned Magistrate did not misdirect himself regarding sentence.
18. I therefore make the following order:

THE APPEAL BY BOTH APPELLANTS ON CONVICTION AND SENTENCE IS DISMISSED.

J.A SNYDERS

ACTING JUDGE

I concur

C.C WILLIAMS

JUDGE

On behalf of Appellant: Mr A Buthelezi (Legal Aid SA)

On behalf of Respondent: Adv JJ Cloete (DPP)

[1] Criminal Law, CR Snyman, 6th ed, Lexis Nexis at p 508

[2] See Snyman at p 509

[3] 1981 (1) 1002 (A) at 1015 G - H

[4] 1959(1) SA 489(A) at 493 H

[5] At 493 G

[6] S v Malgas 2001(1) SACR 469 (SCA) at 481 J

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